

REMARKS

Related Application

The instant application is related to copending application Serial No. 10/553,671, filed October 17, 2005. Both applications claim the benefit of priority from US Provisional Application Serial No. 60/ 463,726, filed April 18, 2005.

Amendments

The claims are amended to use language and punctuation in accordance with conventional US practice. With respect to the amendments to claim 14, see, for example, page 17, lines 5-11. With respect to the amendments to claim 31, see, for example, page 33, lines 10-15. Claims 26-27 and 33-34 are cancelled

Election

In response to the Restriction Requirement, applicants hereby elect Group I, claims 1-16, drawn to formulations. With respect to the Election of Species Requirement, applicants elect the following embodiments (corresponding to species groups (a)-(g) set forth at pages 4-5 of the Office Action):

- (a) effect pigments (see claim 3);
- (b) synthetic mica (see claim 5);
- (c) TiO₂ (see claims 6-9);
- (d) spherical particles coated with metal oxide(s) (see claims 10-11)
- (e) silica (see claim 3 and 23);
- (f) zinc oxide (see claims 15 and 20); and
- (g) proteins (see prior claim 34, now cancelled).

Claims 1-16 read on the elected species. The Restriction Requirement is, however, traversed.

In the Restriction, it is asserted that Groups I, II, and III, drawn to formulations, methods of preparing same, and methods of using same, respectively, do not relate to a single general inventive concept because the allegedly lack the same or corresponding technical feature under PCT rule 13.2. Applicants disagree.

See section (d) of Annex B (Unity of Invention) of the Administrative Instruction under the PCT, which states that there are three particular situations, for determining unity of

invention under Rule 13.2, that are explained in greater detail. One of these situations is the case of certain combinations of different categories of claims.

As described in section (e)(i), one of these combinations is where there is an independent claim to a product, an independent claim to a process specially adapted for manufacturing the product, and an independent claim for a use of the product. As for the meaning of “specially adapted,” this is intended to mean that the claimed process inherently results in the claimed product, and it is irrelevant whether the product can be made by another process. See section (e) of Annex B.

Contrary to the assertion in the Restriction, unity of invention for this combination does not require a technical feature that defines a contribution over the art. No such requirement is set forth in sections (d) and (e) of Annex B which provide the further details as to unity of invention under Rule 13.2 with respect to this combination of different categories of claims.

Thus, the Restriction fails to establish that the claims do not relate to a single general inventive concept under PCT rule 13.2. Withdrawal of the Restriction is respectfully requested.

With respect to the Election of Species Requirement, applicants assume that requiring an election for each of the features in dependent claims 3, 5, 6- 9, 10-11, 13 and 23, 15 and 20, and 34, is intended to facilitate the Examiner’s examination of these dependent claims. Applicants note that there are clearly embodiments within the generic claim that do not include, for example, a protective coating of claim 13.

If on the other hand, the Election of Species Requirement is intended to require applicant to elect a single species from the claimed genus, then the Election of Species is improper as it prohibits applicant from selecting many of the species within the claimed genus as the elected species.

The Commissioner is hereby authorized to charge any fees associated with this response or credit any overpayment to Deposit Account No. 13-3402.

Respectfully submitted,

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